IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.437 OF 2006
IN
SUMMARY SUIT NO.974 OF 2006
WITH
SUMMARY SUIT NO.974 OF 2006

Natwarlal Laxmichand Vadhani,
Age 67 years,
doing business in firm name and stype of
Paras Engineering Works as Prop. thereof,
Having its office at 78, 1st floor,
Badrika Ashram Building, 1st Khetwadi Lane,
Mumbai-400 004.
..Plaintiff.

Vs.

Mather and Platt Fire Systems Ltd.
A company having its Registered Office
at Chinchwad Works, Mumbai Pune Road,
Chinchwad (East),
Pune - 411 019.
..Defendant.

Mr. Jayesh Bhatt for the Plaintiff.
Mr.Rajesh Shah i/by Rajesh Shah & Co. for the Defendant.

CORAM: A.S. OKA, J.
DATE : JULY 24,2007

ORAL JUDGMENT

1. Submissions of the learned counsel appearing for the parties were heard on the earlier date. The order was not passed as the learned counsel for the Plaintiff was directed to submit revised particulars of the claim in the suit.

2. The Plaintiff has filed a Summary suit for recovery of Rs.8,57,860.23 together with interest at the rate of

18% per annum on the sum of Rs.5,98,353/-.

3. According to the case of the Plaintiff, the Defendant used to place the orders in writing to the Plaintiff for supply of various items as per its requirements and the Plaintiff was supplying the goods accordingly. The Plaintiff is doing the business of manufacturing and sale of flanges, valves and pipe fittings. According to the case made out by the Plaintiff, a purchase order was issued on 9th July, 2003 by the defendant, by which an order was placed for supply of pipe fittings worth Rs.4,67,349/-. The Plaintiff accordingly supplied the goods to the Defendant in five separate lots against bills dated 17th May, 2003, 21st May, 2003, 22nd May,2003, 27th May,2003 and 30th May,2003. Another order dated 19th July, 2003 was placed by the Defendant for supply of flanges. By way of amendment to the said order, the Defendant gave further orders by letters' dated 22nd July,2003, 18th August,2003, 19th September, 2003 and 17th October, 2003. The Plaintiff supplied flanges in five lots in pursuance of the aforesaid orders under five different invoices dated 28th July,2003, 1st August,2003, 8th August,2003, 8th August,2003 and 25th August,2003.

4. According to the case of the Plaintiff, the Defendant became very irregular in payment of bills from the year 2003. According to the case of the Plaintiff, a sum of Rs.3,36,619/- remained outstanding towards supply made under order dated 9th July, 2003. A sum of Rs.2,61,731/- remained outstanding under purchase order dated 19th July,2003 as amended from time to time. The Plaintiff issued a demand notice dated 28th December,2004 to the Defendant demanding the payment of the aforesaid outstanding amounts. The Plaintiff has contended that in each bill issued to the Defendants, it is specified that the interest will be chargeable on the bill amount at the rate of 18% per annum if the payment is not made within 30 days.

5. A Summons for Judgment was taken out by the Plaintiff. The Defendants filed reply of Shri.N.Venkataraman, Sr.Manager (Accounts). Relevant paragraphs of the said reply are paragraphs 7 and 8. The said paragraphs are reproduced as under.

> "I say that the said Plaintiff had supplied excess quantity of materials to the Defendants and as per the understanding arrived at between the Plaintiff and the Defendants, the Defendants have returned back said excess materials to the

Plaintiff on 20th November, 2003 and raised the Debit Note dated 28th November, 2003 for Rs.2,73,240/-. Here to annexed and marked Exhibit-1 is a copy of said Debit Note dated 28th November, 2003 alongwith their letter dated 20th November, 2003 with annexure thereto. I refer to and rely upon said Debit Note in the said letter for its true interpretation and meaning thereof.

I say that the Plaintiff has not given credit of the said amount of Rs.2,73,240/-. I say that the Defendants have now filed a Scheme of Arrangement between MATHER AND PLANT FIRE SYSTEM LIMITED and its UNSECURED CREDITORS in the Bombay High Court. I say that the Defendants have taken out Company Application No.1140 of 2006 for calling the meeting of the Unsecured Creditors, which will be now convened at Hotel Kalasagar, Plot No.P-4, Mumbai Pune Road, Kasarwadi, Pune - 411034 on Saturday the 30th day of December, 20056 at 11.00a.m. I say that a copy of the said Scheme of Arrangement and Explanatory statement under Section 393 of the Companies Act, 1956 have been served upon the said Plaintiff by the Defendants. Hereto

annexed and marked Exhibit-2 is a copy of said Scheme of Arrangement and Explanatory statement. I say that Plaintiff is one of the unsecured creditors and the said Plaintiff is entitled to attend the said court convened meeting and vote for the said Scheme and the Plaintiff will be paid as per the terms and conditions of the said Scheme of Arrangement".

6. A rejoinder was filed by the Plaintiff. In Paragraph-3 of the rejoinder, the Plaintiff has stated that he is agreeable to accept the Defendant's claim for reduction of Rs.2,73.340/-, if the Defendant is agreeable to pay the balance amount immediately.

7. I have heard the submissions of the learned counsel appearing for the parties. The learned counsel appearing for the Plaintiff stated that the Plaintiff is giving up the claim to the extent of Rs.2,73,340/- as stated in affidavit in rejoinder. The learned counsel for the Plaintiff has tendered on record revised particulars of claim after making a deduction of the sum of Rs.2,73,340/-. He submitted that this is a case where there is absolutely no defence available to the Defendants to defend the suit. The learned counsel for the Defendants opposed the Summons for

Judgment by pointing out that the Defendants have a reasonable defence. He invited my attention to Paragraph-8 of the affidavit-in-reply and stated that as the Defendant has filed the Scheme of Arrangement with Unsecured Creditors in this court, the Plaintiff is entitled to attend the meeting convened by the Court and as per the terms and conditions of the Scheme, the Plaintiff will be paid necessary amount. He therefore, prayed for grant of unconditional leave to defend.

8. I have considered the submissions. It is crystal clear from Paragraph-7 of the reply filed by the Defendant to the Summons for Judgment that the only defence raised on merits is based on a Debit Note dated 28th November,2003 in the sum of Rs.2,73,240/-. In Paragraph-7 of the reply, the only contention raised on merits is that the Plaintiff has not given a credit for the said amount of Rs.2,73,240/-. The only other contention is that the Defendant has filed a Scheme of Arrangement with its Unsecured Creditors in this court.

9. Now the plaintiff has given up the claim to the extent of Rs.2,73,240/-. Thus there is no defence available to the Plaintiff. At the most, it can be said that the Defendant will have to clear the liability as per the terms and conditions of the Scheme

of Arrangement. Therefore, merely because the scheme is approved, the liability of the Defendant is not affected. The learned counsel for the Defendant states that after the reply was filed, by order dated 30th April, 2007, the Scheme has been passed by this court subject to certain modifications.

10. As stated earlier, the plaintiff has given up the claim to the extent of Rs.2,73,340/- and in the revised particulars of the Claim tendered by the Plaintiff, a credit has been given to the Defendant for the sum of Rs.2,73,340/-. The revised particulars tendered by the Plaintiff are taken on record and marked "X" for identification. Thus, the Defendant has no defence available in so far as the principal amount claimed in the revised Particulars of claim is concerned.

11. According to the case of the Plaintiff, there is a stipulation in the bills for payment of bills within 60 days and for payment of interest at the rate of 18% per annum if payment is not made within 30 days. In view of the stipulation, the Plaintiff has claimed in the suit the interest at the rate of 18% per annum after 60 days on each bill. Therefore, on the principal amount, the Plaintiff is entitled to interest at the rate of 18% p.a. from the date of the suit.

12. Hence, there will be a decree for the sum of Rs.4,42,173.22 against the Defendant together with further interest on the principal amount of Rs.3,25,010/- at the rate of 18% per annum from the date of institution of the suit till the realization or the payment. The Defendant shall pay the proportionate costs of the suit to the Plaintiff. Suit stands decreed accordingly.

13. Summons for Judgement is disposed of accordingly.

14. The Plaintiff will be entitled to refund of court fee, if any, as per the rules.

15. Certified copy is expedited.

(A.S. OKA, J.)